

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Escutia Analyst: LuAnna Hass Bill Number: SB 987
Related Bills: See Legislative History Telephone: 845-7478 Introduced Date: 02-23-2001
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: State Agencies Establish Effective Bilingual Services Program

SUMMARY

This bill would make various changes to current laws that address state agencies and bilingual services, such as:

- expanding the definition of “substantial number of non-English-speaking people,”
- requiring distributed written materials, including forms, applications, letters, and notices, to be in non-English languages, as appropriate, and
- requiring state agencies and departments to establish bilingual services programs.

PURPOSE OF THE BILL

According to the author’s staff, the purpose of this bill is to require state agencies to expand their bilingual services.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative January 1, 2002.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Title VI of the Civil Rights Act of 1964 states that no person shall be excluded from participation in, denied the benefits of, or be subject to discrimination based on race, color, or national origin, under any program or activity receiving Federal financial assistance. A federal aid recipient’s (federal program) failure to assure that people who are not proficient in English can effectively participate in and benefit from the federal program or activity may constitute national origin discrimination as prohibited by Title VI.

Board Position:

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Department Director

Date

Gerald H. Goldberg

06/14/01

On August 11, 2000, the President of the United States issued Executive Order 13166 entitled "Improving Access to Services for Persons With Limited English Proficiency (LEP)." The order requires each Federal agency to examine the services it provides to the public and implement a system by which LEP persons can access those services. The system that is implemented by each agency must be consistent with, but not unduly burden, the fundamental mission of the Federal agency. To assist the agencies, the Department of Justice (DOJ) issued a general guidance document that outlines the compliance standards that the agencies must follow. The DOJ guidance document outlines Title VI and its regulations that require each agency or recipient of Federal assistance to take "reasonable steps to provide meaningful access" to LEP persons. The "reasonable steps" are contingent on four primary factors:

1. Number or proportion of LEP individuals who would be excluded from the benefits or services if the language barrier is not removed;
2. Frequency of the LEP individuals contact with the program;
3. Nature and importance of the Federally-assisted program; and
4. Resources available to the Federally-assisted program.

For purposes of judicial review, Executive Order 13166 was intended only to improve the internal management of the executive branch of the federal government. The order does not create any rights or benefits, substantive or procedural, enforceable at law by a party against the United States or its agencies.

State law initially enacted in 1973 requires state agencies that are directly involved with supplying information or services to the public and that have contact with non-English-speaking people to employ bilingual personnel in public contact positions. In addition, the agencies may utilize existing funds to contract for telephone-based interpretation services.

Any materials that explain the services available at a state agency must be translated into any non-English language that may be spoken by a substantial number of the public that the agency serves. Additionally, any oral or written notice of the availability of these materials must be given in the same non-English language that the materials were translated. Current law provides that although the materials must be provided in the non-English language, they are not required to be translated verbatim.

A substantial number of the public is defined as members of a group that do not speak English or are unable to effectively communicate in English because it is not their native language. The group must be comprised of five percent or more of the people served by the state agency.

A state agency with local offices that serve a substantial number of non-English-speaking people may elect to (1) distribute written materials in a non-English language, or (2) furnish translation aids, guides, or assistance in completing and understanding materials written in English under the following circumstances:

- the written materials, including forms, applications, questionnaires, letters, or notices, must provide information or require an individual to furnish information, or
- the information that is furnished or required of the individual may affect their rights, duties, or privileges in relation to the services or benefits the state agency provides.

State agencies are required to conduct a survey of their local offices every two years and report the results to the State Personnel Board (SPB). The survey requests various state agency information, including, but not limited to, the number of bilingual employees in public contact positions and the number of non-English-speaking people served by each local office.

In 1986 the Constitution of California was amended to establish English as the official language of the State of California and to prohibit the Legislature from enacting any law that diminishes or ignores the role of English as the common language of the State of California. The Constitution also allows any person who is a resident or is doing business in the state to sue the State to enforce the provision.

THIS BILL

This bill would remove the option of allowing state agencies with local offices that meet specific criteria to:

- distribute written materials, including forms, applications, questionnaires, letters, or notices in a non-English language, or
- provide translation aids, guides, or assistance in completing and understanding materials written in English.

This bill would instead require state agencies to distribute these same written materials. In addition, state agencies may provide the translation aids, etc.

This bill would expand the definition of “substantial number of non-English-speaking people” to include groups consisting of:

- 10,000 or more residents of a county where a local office of a state agency is located,
- at least five percent of the residents of a county where a local office of a state agency is located, or
- at least five percent of the people served by any local office of a state agency.

The agencies would use information or data from the United States Bureau of the Census or the Department of Finance to calculate the above percentages. The state agencies or departments must reevaluate this information every two years beginning in 2002.

This bill would require state agencies and departments to establish, coordinate, and monitor a departmental plan to provide services to non-English speaking people. This requirement is to be headed by the executive of each state agency or department or their designated staff person.

This bill would remove language from current law that allows state agencies to implement the bilingual services act “to the extent that local, state, or federal funds are available.” In addition, this bill would allow state agencies to contract for telephone interpretation services, without regard to the source of funds.

This bill would expand the role of SPB in ensuring that state agencies comply with these laws.

This bill would require state agencies to post signs at the reception desk or point of initial public contact that inform individuals of that agency's translation obligation and the complaint process if the agency violates those obligations.

This bill would allow an individual or an organization acting on behalf of an aggrieved party to file a written complaint with the state agency within one year after the aggrieved party believed an agency failed to provide bilingual services. This bill also outlines a complaint resolution process that includes appeals, investigations, and hearings when needed.

This bill would increase the information to be collected for the biannual survey conducted by each state agency. The agencies must use the information to develop an implementation plan for establishing a bilingual services program. Several existing survey provisions would be expanded to require the data collected to be specific to each local office. This bill also would require additional data to be collected by each state agency, including:

- The name, position, and contact information of the designated person that is responsible for overseeing the implementation plan.
- A description of any other bilingual services that are used.
- A list for each local office of materials to be translated, the languages to be used, and whether they have been translated.
- A description of the complaint resolution procedures and a list of the number of complaints filed during the previous two years, and actions taken to resolve them.
- A description of any deficiencies, as specified in the bill, and the proposed actions to resolve them.
- Copies of written information, including staff materials on serving the population that are prepared as a guide to implementing the bilingual services program.

Each state agency must report the survey results to SPB. Any complaints and their resolutions must be documented by the state agency and copies must be kept for at least five years.

This bill would require SPB to review survey results and implementation plans of state agencies. After reviewing an agency's implementation plan, SPB may order corrections to be completed by the agency within 120 days and the agency must report on their progress every six months. This bill also allows SPB to hold hearings, conduct investigations, adopt regulations, and inspect the bilingual services program of any state agency for compliance.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would significantly impact the department's programs and operations by requiring state agencies, including the department, to provide written materials, including forms, applications, letters, and notices, in languages other than English. The department currently maintains approximately 2,500 public business forms and 250 tax forms that would need to be translated under this bill for each and every non-English speaking population that meets the specifications in this bill. In addition, the department would need to employ additional translators to handle any phone calls, correspondence, etc., that may be generated by the translated bilingual materials.

In the instance that a qualified translator is not available for a specific non-English language, this bill could be interpreted to require the department to either:

- train a current employee to speak the non-English language, or
- hire an individual that speaks the non-English language and subsequently train them on tax programs and policies.

This bill would require state agencies to conduct a biannual survey and use the information to develop an implementation plan for establishing a bilingual services program. It appears that the information that is requested in this bill is part of the implementation plan instead of part of the biannual survey. If this is the author's intent, then this bill no longer contains language outlining what information is to be required in the biannual survey.

This bill does not require state agencies to implement the provisions of this bill within any specified timeframe. The author may wish to specify an implementation date for state agencies to complete the requirements outlined in this bill.

LEGISLATIVE HISTORY

AB 763 (Shelley, 2001/2002) would require state agencies to provide, in non-English languages, any existing materials on the Internet that explain state agency services. This bill is in the Assembly Judicial Committee. AB 805 (Shelley, 2001/2002) would require state agency websites to have a link to non-English information. This bill is in the Assembly Appropriations Committee.

PROGRAM BACKGROUND

As directed under current law, FTB conducts a survey every two years and reports to SPB the number of non-English speaking people served by the department. Currently, FTB has identified Spanish as the only non-English language comprising five percent or more of the people served by any local office. Currently FTB provides 15 various brochures, pamphlets, or schedules in Spanish. The tax form booklets include language in Spanish informing non-English-speaking taxpayers of the availability of bilingual assistance.

A review of the Internal Revenue Service (IRS) website found a listing of forms and publications that contain a handful of publications in Spanish. It does not appear that tax forms are reproduced on their website in any language other than English. The Form 1040 tax booklet has a listing of six publications that are available in Spanish, and the automated TeleTax information line provides information in English or Spanish.

OTHER STATES' INFORMATION

Review of individual income tax booklets for *Colorado, Florida, Texas, Oregon, Arizona, New Mexico*, and *New York* found that Oregon is similar to California by offering telephone assistance in Spanish only to help taxpayers complete English tax forms.

It appears that none of the states reviewed offered tax forms or publications in languages other than English. These states were reviewed because of geographic location and a population diversity that is similar to California.

FISCAL IMPACT

The department's costs cannot be determined until it is known which populations would be impacted, but it is anticipated that the costs of translating 2,500 public business forms and 250 tax forms into any language other than English would be significant. Additional annual costs would be incurred for translators to handle correspondence and phone calls.

ECONOMIC IMPACT

This bill would not impact the state's income tax revenue.

LEGAL IMPACT

To the extent this bill is viewed as diminishing or ignoring the role of English as the common language of the State of California, it may be subject to challenge as violating the California Constitution.

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